

*Code revision  
Society signature*  
Judiciary No. 1.  
November 13, 1933.

House File No. 14.  
By JUDICIARY COMMITTEE NO. 1.

[Five separate and detailed search warrant proceedings appear in our Code.]

One covers the seizure of (1) property which has been stolen or embezzled, (2) property which has been used as a means of committing a felony, and (3) property which is being held with the intent to commit a public offense therewith. (See chapter 617.)

One covers the seizure of cigarettes and cigarette papers held in violation of law. (See sections 1578 to 1581, inc.)

One covers the seizure of intoxicating liquors held in violation of law. (See chapter 96.)

Two separate and detailed procedures cover gambling devices. (See chapter 593.)

A vast amount of repetition necessarily occurs in each of these separate statutes.

But not one of the five statutes is complete in itself.

The object of this bill is to provide one uniform and comprehensive statute governing search warrant proceedings, with consequence that the procedure will be simplified and much valuable space in the Code will be saved.]

## A BILL FOR

An Act to define the term "search warrant," to declare the conditions under which search warrants may issue, to amend, revise, and codify various statutes pertaining to search warrants, in order to provide a uniform procedure governing search warrant proceedings, and to this end to repeal chapter six hundred seventeen (617) of the Code, 1931, and to enact a substitute therefor; also to amend sections two thousand ten (2010), thirty-one hundred fifty-nine (3159) and thirteen thousand two hundred three (13203) of said Code; also to repeal the following chapter and sections of said Code, to wit:

1. Sections fifteen hundred seventy-eight (1578) to fifteen hundred eighty-one (1581), inclusive.

2. Section thirty-one hundred sixty (3160).

3. Chapter ninety-six (96).

4. Sections thirteen thousand two hundred (13200), thirteen thousand two hundred one (13201), and sections thirteen thousand two hundred four (13204) to thirteen thousand two hundred nine (13209), inclusive.

5. Sections thirteen thousand two hundred eleven (13211) to thirteen thousand two hundred fifteen (13215), inclusive.

*Be It Enacted by the General Assembly of the State of Iowa:*

1 Section 1. Chapter six hundred seventeen (617), Code, 1931,

2 is hereby repealed, and the following is enacted in lieu thereof,

3 to wit:

4     “13418. Definition. A search warrant is an order in writing,  
5 in the name of the state, signed by a magistrate, other than a  
6 judge of the supreme court, directed to a peace officer, command-  
7 ing him to search for personal property, and bring it before the  
8 magistrate.

9     “13418-f1. Docketing—trial—nature of proceedings. Search  
10 warrant proceedings shall be docketed in the name of the state  
11 against the property seized and shall be tried as an ordinary  
12 action, the county attorney appearing for the state.

13     “13419. When authorized. A search warrant may be issued:

14     1. For property which has been stolen or embezzled.

15     2. For property which has been used as a means or as one of  
16 the means of committing or of accomplishing the commission of a  
17 felony.

18     3. For property which is in the possession of a person with  
19 the intent to use it as a means of committing a public offense,  
20 or which has been delivered by such person to another for the  
21 purpose of concealing it.

22     4. For property which is being used or employed in carrying  
23 on, keeping or maintaining a place of any description for the  
24 purpose of gambling for money or for any other thing of value.

25     5. For personal property of the character enumerated in  
26 section thirteen thousand two hundred three (13203) of the Code,  
27 1931.

28     6. For property of the character specifically enumerated in  
29 section thirteen thousand two hundred ten (13210) of the Code,

30 1931.

31 7. For cigarettes and cigarette papers, and the containers  
32 thereof, received, possessed, kept, stored, sold or given away in  
33 violation of any law of this state, or with intent to violate any  
34 such law.

35 8. For intoxicating liquors, including alcohol, brandy,  
36 whiskey, rum, gin, beer, ale, porter, wine, spirituous, vinous,  
37 and malt liquors, manufactured, sold, kept for sale, owned, or  
38 possessed in violation of any law of this state, including all  
39 instrumentalities, containers, equipment, articles or things used  
40 or employed or intended to be used or employed in effecting said  
41 unlawful acts or any of them.

42 9. For any other property which is legally subject to a  
43 search warrant by any law of this state.

44 "13419-f1. Information. Any credible resident of this state  
45 may make application for the issuance of a search warrant by filing  
46 before any magistrate, except a judge of the supreme court, a  
47 written information, supported by his oath or affirmation, and  
48 alleging therein the existence of any ground or grounds specified  
49 in this chapter as ground for the issuance of a search warrant  
50 and that he believes and has substantial reason to believe that  
51 said ground or grounds exist in fact. Said information shall  
52 describe with reasonable certainty the person or premises, or  
53 both, to be searched, the property to be seized, and the person,  
54 if known, in possession of said premises and property.

55 "13419-f2. Issuance of warrant. If the magistrate is satis-

56 fled from his examination of the applicant, and of other witnesses,  
 57 if any, and of the allegations of the information, of the exist-  
 58 ence of the grounds of the application, or that there is probable  
 59 cause to believe their existence, he shall issue a search warrant,  
 60 signed by him with his name of office, directed to any peace  
 61 officer in the county, commanding him forthwith to search the  
 62 person or place named for the property specified, and bring said  
 63 property before him.

64 "13419-f3. Form of warrant. The warrant may be substan-  
 65 tially the following form :

66 County of.....) }  
 67 State of Iowa ) }

68 To any Peace Officer of said County :

69 Proof having been this day made before me as provided by law  
 70 that (Here, with reasonable certainty and in accordance with the  
 71 information and other proof obtained by the magistrate, designate  
 72 the property, its location, the person in possession thereof, and  
 73 the unlawful use or purpose to which it has been, or is being  
 74 employed or held)

75 and being satisfied that the foregoing recital relative to  
 76 said property is probably true, now, therefore, you are commanded  
 77 to make immediate search of (Here state whether the search is of  
 78 the person of a named person or of said premises, or of both) and  
 79 if said property or any part thereof be found you are commanded to  
 80 bring said property forthwith before me at my office.

81 Dated at ..... this..... day of .....,

82 193.....

83

84

.....  
(Official title)

85 “13419-f4. Service of warrant. A search warrant may in all  
86 cases be served by any peace officer, but by no other person,  
87 except in aid of the officer on his requisition, he being present  
88 and acting in its execution.

89 “13419-f5. Execution of warrant. The peace officer to whom  
90 such warrant shall be delivered shall, in the daytime or in the  
91 nighttime, forthwith obey and execute, as effectually as possible,  
92 the commands of said warrant, and forthwith make return of his  
93 doings to said magistrate, and shall securely keep all property  
94 so seized by him and the vessels, if any, containing said property  
95 until final action be had thereon.

96 “13419-f6. Breaking in to execute warrant. The officer may  
97 break open any outer or inner door or window of a house, or any  
98 part thereof, or anything therein, to execute the warrant, if,  
99 after notice of his authority and purpose, he is refused admittance.

100 “13419-f7. Liberating person assisting in execution. He may  
101 break open any outer or inner door or window of a house for the  
102 purpose of liberating a person who, having entered to aid him in  
103 the execution of the warrant, is detained therein, or, when  
104 necessary, for his own liberation.

105 “13419-f8. Arrest of persons. The officer serving a search  
106 warrant shall, in connection therewith, and in addition thereto,  
107 make arrest of persons under all circumstances justifying an

108 arrest without a warrant, and take said persons before said magis-  
109 trate to be dealt with as provided by law.

110 “13419-f9. Return of warrant. A search warrant must be  
111 executed and returned to the magistrate who issued it within ten  
112 days after its date. After the expiration of such time the  
113 warrant, unless executed, is void.

114 “13419-f10. Receipt for property. When the officer takes  
115 any property under the warrant, he must, on demand, give to the  
116 person from whom it was taken, or in whose possession it was  
117 found, an itemized receipt therefor.

118 “13419-f11. Inventory. The officer must forthwith return the  
119 warrant to the magistrate, with a complete inventory of the prop-  
120 erty taken, made publicly or in the presence of the person from  
121 whose possession it was taken and of the applicant for the warrant,  
122 if they be present.

123 “13419-f12. Copy of inventory. The magistrate, if required,  
124 must deliver a copy of the inventory to the person from whose  
125 possession the property was taken, and to the applicant for the  
126 warrant.

127 “13419-f13. Notice of hearing. Said magistrate, in the event  
128 of a seizure under said warrant, shall, within forty-eight hours  
129 after the officer’s return is filed with him, issue a notice of  
130 hearing on said seizure, which notice shall:

131 1. Be addressed:

132 a. To the person or persons named or described in said inform-  
133 ation as the owner or keeper or possessor of said property.

134 b. “To all persons whom it may concern”.

135 2. Describe said property so seized with reasonable certainty,  
136 and state where, when, and why the same was seized.

137 3. Summon said persons and all others whom it may concern to  
138 appear before said magistrate within the county at a place and  
139 time named in said notice, which time shall not be less than five  
140 nor more than fifteen days after the filing of said return, and  
141 show cause, if any they have, why said property, together with  
142 the containers in which the same are contained, if any, should  
143 not be forfeited.

144 4. Be signed by said magistrate.

145 “13419-f14. Service of notice. Said notice shall be served  
146 at least three days prior to the hearing.

147 1. By posting a copy thereof in some conspicuous place on or  
148 about the building or place where said property was seized.

149 2. If the person or persons named or described in the inform-  
150 ation as owner or keeper of the property so seized be resident of  
151 said county, then by personally serving said notice on said person,  
152 or by leaving a copy of said notice at the last known usual place  
153 of residence of said person with some adult member of his family  
154 if found at said residence.

155 “13419-f15. Hearing. The magistrate must, at the time so  
156 fixed, or at an adjournment thereof, proceed to take testimony in  
157 relation to the property so seized.

158 “13419-f16. Substitute magistrate. Should the magistrate  
159 issuing the warrant be absent or for any reason be unable to serve

160 at the time of the hearing aforesaid, any other magistrate of the  
161 county, designated by the absent magistrate or by the county  
162 attorney, shall act.

163 “13419-f17. Procedure. The procedure in the trial of cases  
164 not commenced before a judge of the district court may be the  
165 same, substantially as in case of misdemeanors triable before  
166 justices of the peace. Proceedings commenced before a judge of  
167 the district court may be treated as pending in the district court  
168 and be disposed of under the general procedure therein provided  
169 except as it may be herein modified.

170 “13419-f18. Right to contest forfeiture. At the time and  
171 place prescribed in said notice, the person named in said inform-  
172 action, or any other person claiming an interest in said property,  
173 or in any part thereof, may appear and show specific and legal  
174 cause why the same should not be forfeited.

175 “13419-f9. Insufficient description—effect. When any  
176 property shall have been seized by virtue of any such warrant, the  
177 same shall not be discharged or returned to any person claiming  
178 the same, by reason of any alleged insufficiency of description  
179 in the warrant, but the claimant shall only have a right to be  
180 heard on the merits of the case.

181 “13419-f20. Property restored. If it appears that the  
182 property taken is not the same as that described in the warrant,  
183 or that there is no probable cause for believing the existence of  
184 the grounds on which the warrant was issued, the magistrate shall  
185 cause it to be restored to the person from whom it was taken.

186 “13419-f21. Execution, return, and costs. The officer shall  
187 obey said order and make return thereon to the court of his acts  
188 thereunder and the costs of the proceeding in such case attending  
189 the restoration shall be taxed to and paid by the state.

190 “13419-f22. Judgment of forfeiture and destruction. If the  
191 magistrate finds that the property or any part thereof seized  
192 under the search warrant is of the illegal nature or character  
193 alleged in the information, he shall enter judgment of forfeit-  
194 ure to the state of said property, or of the part thereof, as the  
195 case may be, and shall, in addition to said judgment of forfeit-  
196 ure, enter an order directing the immediate destruction of all  
197 such property which does not have a legitimate use and the sale  
198 of all property other than money which may be used legitimately,  
199 unless said latter property is otherwise disposed of as in this  
200 chapter provided.

201 “13419-f23. Execution—sale—destruction. Execution shall  
202 issue for the sale of all property, except money, which may have  
203 a legitimate use, and for the destruction of all property having  
204 no legitimate use. Sales shall be made as provided by section  
205 eleven thousand seven hundred twenty-four (11724), Code, 1931.  
206 Due return of the execution shall be made thereon by the officer  
207 executing it.

208 “13419-f24. Limitation on sale. Property seized under search  
209 warrant and forfeited to the state and ordered sold shall be sold  
210 only to persons who have legal right to purchase or receive such  
211 property.

212 “13419-f25. Stamping cigarettes, etc. In the sale of cigar-  
213 ettes and cigarette papers which have been seized on search war-  
214 rant and forfeited, the officer shall be exempt from the provisions  
215 of the law requiring the stamping of such articles before sale.

216 “13419-f26. Proceeds. The proceeds derived from a sale and  
217 the money seized and forfeited, if any shall be paid by the peace  
218 officer to the county treasurer and by him credited to the school  
219 fund of the county.

220 “13419-f27. Disposition of stolen or like property. If the  
221 property taken by virtue of a search warrant was stolen or embez-  
222 zled, it must be restored to the owner, upon his making satisfac-  
223 tory proof to the magistrate of his ownership thereof, or of his  
224 right of possession thereto, as provided in chapter five hundred  
225 sixteen (516). If it was taken on a warrant issued on the grounds  
226 stated in the second and third subdivisions of section thirteen  
227 thousand four hundred nineteen (13419), the magistrate must retain  
228 it in his possession, subject to the order of any other court  
229 having jurisdiction to try the offense which the property taken  
230 was used as a means of committing, or so intended to be.

231 “13419-f28. Utilizing condemned liquors. When a judgment  
232 has been entered decreeing a forfeiture of any intoxicating  
233 liquors, the magistrate shall direct the disposition of such  
234 liquors and the vessels containing the same:

- 235 1. By ordering the destruction thereof; or
- 236 2. By ordering any portion thereof consisting of alcohol,  
237 brandies, wine, or whiskey, to be delivered, for medicinal or scien-

238 tific purposes, to any state or reputable hospital in the county,  
239 or in adjoining counties, or to the board of control of state  
240 institutions.

241 “13419-f29. Dispensation by board of control. Liquors  
242 delivered to the board of control shall be dispensed by it to any  
243 state institution or reputable hospital in this state and solely  
244 for medical or scientific purposes.

245 “13419-f30. Transportation by carrier. When any such liquor  
246 is ordered delivered or shipped, the magistrate shall securely  
247 attach, or cause to be attached, to the box or package containing  
248 the same, a certified copy of the order of the court and thereupon  
249 any common carrier may receive, transport, and deliver such liquor  
250 to the consignee.

251 The cost of packing and transportation shall be paid by the  
252 consignee receiving such liquor.

253 “13419-f31. Utilizing other property. When property seized  
254 under search warrant has been finally forfeited to the state, and  
255 is of a nature useful to peace officers in law enforcement, the  
256 magistrate may order it delivered to any state, county, or city  
257 law-enforcing agency, and in such case the head, chief, or super-  
258 intendent of such agency shall receipt to the magistrate therefor,  
259 and hold and use such property solely in effecting law enforce-  
260 ment, and deliver the same to his successor and shall be liable  
261 therefore on his bond.

262 “13419-f32. Costs. If no person be made defendant, or if  
263 judgment be in favor of all the defendants who appear and are

264 made such, then the costs of the proceeding shall be paid as in  
265 ordinary criminal prosecution where the prosecution fails.

266 If the judgment shall be against only one party defendant,  
267 he shall be adjudged to pay all the costs of the proceedings.

268 If such judgment shall be against more than one party defend-  
269 ant claiming distinct interests in said property, the costs of  
270 said proceedings and trial shall be, according to the discretion  
271 of said magistrate, equitably apportioned among said defendants.

272 Execution shall be issued on said judgments against said  
273 defendants for the amount of costs so adjudged against them.

274 “13419-f33. Seizure of other property—disposition. When  
275 any officer in the execution of a search warrant shall find any  
276 stolen or embezzled property, or shall seize any other things for  
277 which a search warrant is allowed by this chapter, all the property  
278 and things so seized shall be safely kept, by the direction of the  
279 court or magistrate, so long as shall be necessary for the purpose  
280 of being produced as evidence on any trial; and as soon as may be  
281 afterwards all such stolen and embezzled property shall be  
282 restored to the owner thereof, and all other things seized by  
283 virtue of such warrant may be destroyed, or otherwise disposed of,  
284 under the direction of the court or magistrate.

285 “13419-f34. Searching prisoner. When a person charged with  
286 an offense is supposed by the megistrate before whom he is brought  
287 to have upon his person a dangerous weapon, or anything which may  
288 be used as evidence of the commission of the offense, the magis-  
289 trate may direct him to be searched in his presence, and the

290 weapon or evidence to be retained, subject to his order, or the  
291 order of the court in which the defendant may be tried.

292 “13419-f35. Maliciously suing out warrant. Whoever  
293 maliciously and without probable cause procures a search warrant  
294 to be issued and executed is guilty of a misdemeanor.

295 “13419-f36. Officer exceeding authority. A peace officer  
296 who, in executing a search warrant, wilfully exceeds his author-  
297 ity, or exercises it with unnecessary severity, is guilty of a  
298 misdemeanor.

299 “13419-f37. Appeal by claimant. Any person appearing as  
300 aforesaid may, when the proceedings are not before a judge of the  
301 district court, appeal to the district court from said judgment  
302 or forfeiture, as to the whole or any part of said property.

303 “13419-f38. Appeal—how taken. Said appeal shall be taken  
304 by filing with the magistrate, within two days after the entry  
305 of forfeiture, a written notice of appeal specifically stating  
306 the part of the judgment of forfeiture appealed from, and a bond  
307 in such reasonable sum as the magistrate may fix and approve,  
308 conditioned to pay all costs of the proceedings in case appellant  
309 is unsuccessful of his appeal.

310 “13419-f39. Appeal by state. Where the judgment is against  
311 the state, it shall have the same right of appeal, and on the  
312 same conditions, except that no bond shall be required.

313 “13419-f40. Stay of proceedings. If an appeal be taken, the  
314 same shall operate as a stay of proceedings and the property  
315 seized under the warrant and involved in the appeal shall not be

316 returned to any claimant thereof nor sold or destroyed or other-  
317 wise disposed of until final determination is had.

318 “13419-f41. Applicability. Search warrant proceedings  
319 instituted after the taking effect of this chapter shall, in all  
320 cases, be governed by this chapter. Search warrant proceedings  
321 instituted before the taking effect of this chapter shall be  
322 governed by the law under which such proceedings were instituted  
323 even though herein repealed.”

1 Sec. 2. The following chapter and sections of the Code,  
2 1931, are hereby repealed, to wit:

3 1. Sections fifteen hundred seventy-eight (1578) to fifteen  
4 hundred eighty-one (1581), inclusive.

5 2. Section thirty-one hundred sixty (3160).

6 3. Chapter ninety-six (96).

7 4. Sections thirteen thousand two hundred (13200), thirteen  
8 thousand two hundred one (13201), and thirteen thousand two  
9 hundred four (13204) to thirteen thousand two hundred nine (13209),  
10 inclusive.

11 5. Sections thirteen thousand two hundred eleven (13211) to  
12 thirteen thousand two hundred fifteen (13215), inclusive.

1 Sec. 3. Section thirty-one hundred fifty-nine (3159), Code,  
2 1931, is amended by adding after the last word thereof, the words,  
3 “as provided in chapter six hundred seventeen (617).”

1 Sec. 4. Section thirteen thousand two hundred three (13203),  
2 Code, 1931, is amended by striking out the last three lines of  
3 said section, and by inserting in lieu of said stricken words,

4 the following words, to wit: “and said personal property may be  
5 seized and disposed of under chapter six hundred seventeen (617),  
6 Code, 1931.”

1 Sec. 5. Section two thousand ten (2010), Code, 1931, is  
2 amended by striking from paragraph one (1), line three (3), the  
3 word and figures “section 1973” and by inserting in lieu thereof  
4 the following, to wit: “chapter six hundred seventeen (617)”.